

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Revision of Part 22 of the)
Commission's Rules Governing)
the Public Mobile Services)

CC Docket No. 92-115

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

COMMENTS OF SNET PAGING, INC.

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SUMMARY

SNET Paging, Inc. ("SNET") submits comments in response to the Commission's proposal to rewrite many of its rules governing paging services and requests the Commission to revise its proposed rules in several ways. SNET requests the Commission to abandon its proposal to prohibit use of multi-frequency transmitters since the proposal will decrease, rather than increase, spectrum use because requiring single frequency transmitters will result in fewer customers using the spectrum; is not needed to discourage harmful warehousing of licenses since three other proposed rule changes will do this; and the benefits of using multi-frequency transmitters outweigh any loss of spectrum efficiency.

SNET requests the Commission to modify its proposal regarding addition of transmitters within an existing system to include any transmitters for which the "interfering" contour is within the system's composite "interfering" contour, without regard to whether the "service area" contour of the new transmitter is encompassed by the composite "service area" contour of the existing system, and classify as a minor change any modification of an existing transmitter in such circumstances since this will further conserve Commission resources and not undermine any public policy.

SNET urges the Commission to modify its "first come, first served" proposal to include an exception for an existing paging licensee who operates a system covering the majority of a market and to revise its proposal to condition license grants on non-interference to provide that the condition automatically is eliminated after one year if no interference complaints have been

raised. SNET supports the Commission's proposal to lengthen the period for filing notifications of commencement of service for new transmitters and to permit identification of a station by a call assigned to another station of the licensees.

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To: The Commission

COMMENTS OF SNET PAGING, INC.

SNET Paging, Inc. ("SNET") hereby submits comments in response to the Commission's proposal to rewrite many of its rules governing the Paging and Radiotelephone Service.^{1/} As described below, SNET requests the Commission to revise its proposed rules in several specific ways.

Background

SNET, a wholly owned subsidiary of Southern New England Telecommunications Corporation, is the licensee of a paging system with more than 240 authorized transmitters providing coverage from Maine to Virginia. The SNET system operates on two 931 MHz frequencies.

As a company which only recently has entered the paging business and is in the process of rapidly developing a state-of-the-art wide-area paging network, SNET offers the Commission a different perspective than those with more mature or smaller systems. Because SNET is still developing its large system, the

^{1/}The Paging and Radiotelephone Service is the new name proposed by the Commission for what is now called the Public Land Mobile Service. See Notice of Proposed Rulemaking ("NPRM") at 2 n.6.

impact of some Commission proposals will be substantially greater on it than on other operators.

I. The Commission Should Abandon Its Plan To Prohibit Use Of Multi-Frequency Transmitters And, At Most, Adopt A More Narrowly Tailored Rule To Accomplish The Same Objectives

The Commission's NPRM proposes to require all licensees in the Paging and Radiotelephone Service to have a separate and dedicated transmitter for each channel at each site where two or more channels are assigned to a licensee, thus invalidating a common practice of using a single transmitter capable of transmitting on multiple frequencies by switching from one frequency to another as needed. Since multi-frequency transmitters cannot transmit on more than one frequency at one time, they do not use each assigned channel 100 percent of the time.

The Commission hypothesizes that adoption of a rule banning the use of multi-frequency transmitters will accomplish two important policy objectives. First, the NPRM asserts that single frequency transmitters may be more spectrum efficient than multi-frequency transmitters since multi-frequency transmitters, unlike single frequency transmitters, are inherently incapable of using each assigned channel 100 percent of the time.^{2/} Second, it suggests that requiring one transmitter for each assigned channel at each location will discourage harmful "warehousing" of frequencies.^{3/}

SNET opposes this proposed new rule. As demonstrated below, this rule is not needed to meet either of these two objectives;

^{2/}See NPRM at 12.

^{3/}Id.

moreover, other important public interest policies will be frustrated if it is adopted.

A. The Proposed Rule Will Decrease, Rather Than Increase, Efficient Spectrum Use

The FCC's proposed rule does absolutely nothing to promote efficient use of the spectrum. Instead, adoption of the rule would merely cause paging companies to replace their multi-frequency transmitters with single frequency transmitters at a cost of tens of millions of dollars -- without even a theoretical increase in spectrum efficiency. SNET alone would spend, overall, an estimated \$2.5 million to purchase and install single frequency transmitters at each site where it presently operates multiple frequency transmitters.^{4/} Thereafter, it would have to pay another \$600,000 per year to rent additional space for new equipment at these sites.^{5/}

If anything, the FCC's proposal, rather than promoting more efficient spectrum use, will most likely create less efficient spectrum use in the paging industry because requiring licensees to spend millions of dollars to add additional transmission equipment would force them to charge more for paging service; higher priced

^{4/}SNET operates multiple frequency transmitters at about 100 sites; it estimates that the cost of purchasing and installing single frequency transmitters would be about \$25,000 for each of these sites, for a total capital investment of \$2.5 million (i.e., \$25,000 x 100).

^{5/}SNET estimates that its average rent for each of the 100 sites at which it operates multi-frequency transmitters would increase approximately \$6,000 per year because of the additional space required to accommodate one or more additional transmitters and associated antennas at each of these sites.

paging service means fewer customers, and fewer customers results in less efficient use of the licensee's assigned spectrum.^{6/}

B. Prohibiting Use Of Multi-Frequency Transmitters Is Not Needed To Discourage Harmful Warehousing Of Licenses

The Commission further hypothesizes that prohibiting multi-frequency transmitters is necessary to discourage speculators from obtaining paging licenses in order to "warehouse" frequencies for later sale at a profit. This hypothesis is wrong because three other proposals in this rulemaking will accomplish that objective.

First, the Commission will greatly discourage entities from applying for authorizations in order to resell them at a profit by adopting a rule, as it proposes, which limits settlement payments -- for withdrawing a petition to deny or a mutually exclusive application -- to actual expenses associated with prosecuting the petition or application.^{7/} Second, the agency's proposed new "first come, first served" application processing procedures will eliminate the opportunity for speculators to file against expansion applications by existing licensees.^{8/} Finally,

^{6/}It should be noted that a modern, high speed paging system with automatic simulcast compensation serving 1,200 or 2,400 baud receivers using one multi-frequency transmitter can transmit more pages per hour than an older, slower 300/600 or 512 baud transmission system using two single-frequency transmitters even taking into account time lost in switching from one channel to another between transmissions. Moreover, multi-frequency transmitters are not less spectrum efficient than single-frequency transmitters by virtue of the fact that they switch between frequencies because modern, multi-frequency transmitters perform this switching function almost instantaneously.

^{7/}NPRM at 8, 31-32.

^{8/}NPRM at 2, 12, 50.

if adopted, the Commission's proposal to prohibit a party, for one year, from refileing for authorizations that have terminated for failure to construct will effectively discourage anyone from obtaining frequencies before they reasonably anticipate customer demand for them.^{2/}

If the FCC nonetheless believes that another safeguard against speculation in paging licenses is needed, it should consider restricting use of multi-frequency transmitters to those paging operations which cover a majority of a market. For example, since several transmitters are needed to provide adequate service to a typical metropolitan area, one can reasonably assume that an operator who constructs a paging network covering the majority of a market (including several transmitters and all necessary control, call management and billing facilities) is not a speculator.

**C. Even If Spectrum Usage Were Promoted By
Barring Use Of Multi-Frequency Transmitters,
The FCC Still Should Not Bar Their Use
Because The Benefits Of Using Them
Outweigh The Loss Of Spectrum Efficiency**

Four public interest benefits derived from the use of multi-frequency transmitters but not related to spectrum efficiency are described below.

First, multi-frequency transmitters bring lower rates for paging customers since they enable paging operators to forego unnecessary capital expenditures until they are justified by increased demand. In fact, if multi-frequency transmitters were prohibited, prices to consumers would have to rise in order to pay

^{2/}NPRM at 7, 28.

for the additional transmitters as explained in subsection A above. Second, capital which would otherwise be required to purchase single-frequency transmitters before they are needed can be used to purchase other equipment as necessary either to lower costs and thus reduce customer rates, or to implement new services. Third, the ability to use expansion capital prudently, and only when necessary to meet demand, makes it easier for growing operators to raise capital for their expanding paging businesses since they will not be stretched so thin at a time when extra transmitters are unnecessary to meet existing customer demand. Finally, multi-frequency transmitters conserve antenna tower space, which is becoming substantially more difficult to obtain due to the increasing unwillingness of local governments to allow construction of additional towers.

II. The Commission Should Not Require Notification Upon Adding Any Paging Transmitter Which Operates On A Channel Used By The Rest Of The System If The "Interfering" Contour Of The New Transmitter Is Within The System's Composite "Interfering" Contour

In order to conserve agency and industry resources by eliminating unnecessary filings, the FCC proposes in the NPRM to eliminate the existing requirement to notify it when a new paging transmitter is added on the same channel as a licensee's existing system where both the "interfering" contour and "service area" contour of the new transmitter is within the composite "interfering" and "service area" contours of the licensee's existing use of that frequency.^{10/} At present, a licensee adding a

^{10/} NPRM at 3-4, 10, 38.

transmitter in this circumstance is required to notify the Commission of the added transmitter after it is in operation.^{11/}

SNET supports this proposal. The Commission is correct that not requiring notification in this circumstance will conserve Commission and industry resources without undermining any important public policy.

However, the FCC should broaden its proposal to include within the proposed non-notification policy new transmitters for which the "interfering" contour is encompassed by the composite "interfering" contour of the licensee's existing operation on the same frequency without regard to whether the "service area" contour of the new transmitter is encompassed by the composite "service area" contour of the licensee's existing system. Further application of the non-notification policy to this additional category of situations will conserve substantially more FCC resources than the agency's narrow proposal, and not undermine any public policy. It will conserve substantially more FCC resources than the agency's narrower proposal because adding a new transmitter in a situation where the larger "interfering" contour, but not smaller "service area" contour, is encompassed by existing transmitters occurs frequently in regions of a growing system where few transmitters are in operation. Indeed, SNET has been forced to file license applications for more than 100 new transmitters of this type and has been forced to wait as many as eight months before obtaining an authorization so that it can meet existing demand for service.

^{11/}NPRM at 10.

Applying the non-notification policy to this broader category of new transmitter installations would not adversely affect public policy because, when a new transmitter's "interfering" contour is inside the composite "interfering" contour of the licensee's existing system, the licensee is not expanding into an area that would be available to any other paging operator.

Although inclusion of this type of transmitter within the proposed relaxed procedures of Section 22.165 was not specifically proposed in the NPRM, the Commission may lawfully do so under the Administrative Procedure Act ("APA") because the APA does not require that an agency publish in advance every precise proposal which it may ultimately adopt as a rule but instead that it provide a description of the subject and issues involved. California Citizens Band Association v. U.S., 375 F.2d 43 (9th Cir. 1967). Since the Commission made clear in the NPRM that this rulemaking would address procedural requirements for the addition of new transmitters within an existing system and that the Commission tentatively was proposing to relax procedures for addition of such transmitters, the Commission provided adequate notice of an intent to relax procedural requirements for addition of all types of transmitters within an existing system.

III. If The Commission Does Not Eliminate The Notification Requirement When Adding Any Paging Transmitter Whose Interfering Contour Is Within the Composite Interfering Contour Of A Licensee's Existing Transmitters Operating On That Frequency As Proposed In Section II Above, It Should At Least Exempt Such Transmitters From Its Proposal To Prohibit Reapplying Within One Year For An Authorization Which Has Previously Terminated For Failure To Initiate Operation

In the NPRM, the Commission proposes to prohibit, in all instances, reapplication within one year for the same channel (or channel range) in the same geographic area for which the party previously held an authorization which automatically terminated for failure to commence service.^{12/} The agency suggests that this will discourage speculators from seeking licenses for purposes of resale.^{13/}

The rule as proposed is overbroad. The new rule should not require a waiting period before an existing paging operator may reapply for a transmitter whose "interfering" contour is within the composite "interfering" contour of its existing transmitters. Requiring a waiting period in this situation does not reduce speculation in licenses since parties other than the existing licensee may not lawfully be licensed to operate this transmitter under the Commission's Rules.^{14/}

^{12/}NPRM at 7, 28.

^{13/}NPRM at 7.

^{14/}See 47 C.F.R. & 22.503(d).

IV. The Commission Should Classify As A Minor Change Any Modification Of An Existing Transmitter Where The Interfering Contour Of Both The Existing And Modifying Transmitters Are Within The Applicant's Composite System Interfering Contour

SNET urges the Commission to adopt a new rule in this proceeding which classifies as "minor" all changes to Paging and Radiotelephone Service transmitters where the "interfering" contours of both the existing and modified transmitters are encompassed by the composite "interfering" contour of an applicant's existing licensed system, as long as the modified facilities comply fully with all relevant FCC rules. This new rule is justified for the reasons described in Section II above, which justify exempting from inclusion within the notice requirement the addition of a new transmitter whose "interfering" contour is inside the "interfering" contour of a licensee's existing system.

V. The Commission Should Revise Its Proposal To Grant Mutually Exclusive Applications On A "First Come, First Served" Basis In Order To Exempt Applications Filed By Existing Operators In Response To Applications Mutually Exclusive With Expansion Of Their Systems

In the NPRM, the Commission proposes to grant all mutually exclusive paging applications on a "first come, first served" basis to speed application processing time and prevent applicants from filing applications simply to impede a competitor's applications.^{15/}

SNET generally supports this proposal. As the Commission states, the proposed rule plainly will prevent competitors from impeding expansion efforts and may speed application processing

^{15/} NPRM at 9, 12, 50.

time. SNET urges the Commission, however, to modify the proposal to exempt an existing paging licensee whose system covers the majority of a market by allowing such licensee to file a competing application within 30 days of public notice of acceptance of the initially-filed application. The modification suggested by SNET is in the public interest because, unlike the Commission's proposal, it would permit serious paging operators to oppose speculators by allowing those operators to compete in a lottery for an expansion authorization.

VI. The Commission Should Modify Its Proposal To Condition License Grants On Non-Interference In Order To Eliminate The Condition Automatically One Year After Service Commences If No Interference Complaints Have Been Raised

In the NPRM, the Commission proposes to discontinue its practice of verifying the accuracy of technical exhibits and to replace this practice with automatic imposition of a condition of non-interference to other paging operations for the entire term of all newly granted licenses. The Commission believes this new procedure will speed application processing time without causing unnecessary harm to the policy objective that pre-verification promotes.^{16/}

SNET generally supports the FCC's proposal since it will speed application processing time without harming the public interest, but it urges the Commission to revise its proposed rule to provide that the condition is automatically removed one year from the date service commences in the absence of a formal

^{16/} NPRM at 2, 10, 36.

complaint of interference prior to that date. Revising the proposed rule in this manner will not undermine the Commission's policy objective because any interference should be detected within one year of commencement of service. SNET's proposed modification is advantageous also because it provides licensees with assurance of business continuity. This, in turn, encourages business development, makes licenses transferable, makes it easier to get financing for construction of new facilities or acquisition of existing facilities, and provides an incentive for neighboring operators to fill in their systems and load their channels as soon as possible so that they can detect interference while license conditions remain in place.

VII. The Commission Should Adopt Its Proposals To (a) Lengthen The Period For Filing Notifications Of Commencement Of Service For New Transmitters And (b) To Permit Identification Of A Station By A Call Sign Assigned To Another Station Of The Licensee

In the NPRM, the Commission proposes to extend the date for mailing notifications of commencement of service for new transmitters by allowing notifications to be provided anytime within 15 days after service begins^{17/} rather than insisting that such notification occur no later than the day service commences as required by the existing rules.^{18/} SNET supports this proposal because it will eliminate the burdens and delays in service which presently result from the requirement to coordinate the day that the notification is mailed with the day service begins. A 15-day

^{17/} NPRM at 34.

^{18/} 47 C.F.R. & 22.9(b)(1).

notification period following commencement of service will substantially ease this burden with no offsetting harm to the public interest by allowing paging operators to prepare such notifications on a weekly or bi-weekly basis.

In its NPRM, the Commission also proposes to let licensees in the Paging and Radiotelephone Service identify a station by a call sign assigned to another station in the same system. SNET likewise supports this proposal because it will minimize air time required for station identification without any harm to the public interest.^{19/} Since the Commission routinely grants waivers of the existing station identification requirement,^{20/} the proposed rule change also will conserve resources by eliminating the need for filing and processing these waiver requests.

^{19/}NPRM at 11.

^{20/}47 C.F.R. & 22.213.

Conclusion

For all of the foregoing reasons, SNET requests the Commission to adopt its proposed rule changes with the modifications set forth above.

Respectfully submitted

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